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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE GUADALUPE ROJAS-GUZMAN,  
a/k/a Angel,

Defendant.

3:10-cr-00109-ECR-RAM

**Order on Jury Instructions**

A copy of the packet of jury instructions given to the jury is attached to this Order as Exhibit A. The instructions in Exhibit A are in the same sequence as the sequence in which the instructions were presented to the jury. Each juror received his or her own copy of the instructions in Exhibit A. The form of instructions received by the jury did not contain any citations or other source references.

A copy of the verdict form is attached to this Order as Exhibit B. The verdict form was given over objection by both parties. The jury received on copy of the verdict form, and it was signed, dated, and submitted to the Court.

A copy of the proposed packet of jury instructions is attached to this Order as Exhibit C. This proposed packet contains all of the instructions that had been proposed by the Court, and those proposed by the parties during the course of the trial. This packet was never

1 presented to the jury. Instead, the Court analyzed the proposed  
2 instructions and, after hearing argument from counsel, made rulings  
3 regarding the final form of the instructions that were to be given to  
4 the jury. In addition, the parties' and the Court's proposed verdict  
5 forms are included.

6 The Court will now summarize its rulings with respect to the jury  
7 instructions.

8 The following-numbered instructions in Exhibit A were given  
9 without modification by stipulation: 1, 5, 7, 8, 12, 19, 21, 22, 23,  
10 24, 26, 27, 28, 30, 31, 34, 36, 39, 41.

11 The following-numbered instructions in Exhibit A were given as  
12 modified by stipulation: 11, 13, 15, 17, 42, 47.

13 The following-numbered instruction in Exhibit A was given as  
14 modified over Plaintiff's objection: 6.

15 The following-numbered instruction in Exhibit A was given over  
16 Plaintiff's objection: 46.

17 The following-numbered instructions in Exhibit A were given over  
18 Defendant's objection: 9, 18, 25, 33, 40.

19 The following-numbered instructions in Exhibit C were withdrawn  
20 by stipulation: 2, 4, 14, 16, 20, 29, 32, 35, 37, 38, 43, 44, 45, 48.

21 The following-numbered instruction in Exhibit C was rejected over  
22 Plaintiffs' objection: 10.

23 As to Count One in Exhibit B, the jury answered "Guilty" and  
24 "Weighing 50 grams or more." As to Count Two in Exhibit B, the jury  
25 answered "Guilty" and "Weighing 50 grams or more." As to Count Three  
26 in Exhibit B, the jury answered "Guilty" and "Weighing 50 grams or  
27 more."

1        IT IS, THEREFORE, HEREBY ORDERED that the Clerk of the Court  
2 shall provide a copy of this Order to counsel for Plaintiff and  
3 Defendant. The Clerk need not provide them with copies of the  
4 attached exhibits, however, as the parties were given these exhibits  
5 at the time jury instructions were argued and settled.

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8 DATED: January 5, 2012.

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UNITED STATES DISTRICT JUDGE

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**Exhibit A**

1                                   **INTRODUCTION TO THE FINAL CHARGE**

2           Members of the Jury:

3           Now that you have heard all of the evidence that is to be  
4 received in this trial and each of the arguments of counsel it  
5 becomes my duty to give you the final instructions of the Court as  
6 to the law that is applicable to this case. You should use these  
7 instructions to guide you in your decisions.

8           All of the instructions of law given to you by the  
9 Court--those given to you at the beginning of the trial, those  
10 given to you during the trial, and these final instructions--must  
11 guide and govern your deliberations.

12           It is your duty as jurors to follow the law as stated in all  
13 of the instructions of the Court and to apply these rules of law to  
14 the facts as you find them to be from the evidence received during  
15 the trial.

16           Counsel have quite properly referred to some of the applicable  
17 rules of law in their closing arguments to you. If, however, any  
18 difference appears to you between the law as stated by counsel and  
19 that as stated by the Court in these instructions, you, of course,  
20 are to be governed by the instructions given to you by the Court.

21           You are not to single out any one instruction alone as stating  
22 the law, but must consider the instructions as a whole in reaching  
23 your decisions.

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26                                   INSTRUCTION NO. 1

27                                   Page 1 of 2  
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1       Neither are you to be concerned with the wisdom of any rule of  
2 law stated by the Court. Regardless of any opinion you may have as  
3 to what the law ought to be, it would be a violation of your sworn  
4 duty to base any part of your verdict upon any other view or  
5 opinion of the law other than that given in these instructions of  
6 the Court just as it would be a violation of your sworn duty, as  
7 the judges of the facts, to base your verdict upon anything but the  
8 evidence received in the case.

9       You were chosen as jurors for this trial in order to evaluate  
10 all of the evidence received and to decide each of the factual  
11 questions presented by the allegations brought by the government in  
12 the indictment and the plea of not guilty by defendant Jose  
13 Guadalupe Rojas-Guzman.

14       In resolving the issues presented to you for decision in this  
15 trial you must not be persuaded by bias, prejudice, or sympathy for  
16 or against any of the parties to this case or by any public  
17 opinion.

18       Justice--through trial by jury--depends upon the willingness  
19 of each individual juror to seek the truth from the same evidence  
20 presented to all the jurors here in the courtroom and to arrive at  
21 a verdict by applying the same rules of law as now being given to  
22 each of you in these instructions of the Court.

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26                                   INSTRUCTION NO. 1

27                                   Page 2 of 2  
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**PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT**

I instruct you that you must presume defendant Jose Guadalupe Rojas-Guzman to be innocent of the crime charged. Thus defendant Jose Guadalupe Rojas-Guzman, although accused of crimes in the indictment, begins the trial with a "clean slate"--with no evidence against him. The indictment, as you already know, is not evidence of any kind. Defendant Jose Guadalupe Rojas-Guzman is, of course, not on trial for any act or crime not contained in the indictment. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against defendant Jose Guadalupe Rojas-Guzman. The presumption of innocence alone, therefore, is sufficient to acquit defendant Jose Guadalupe Rojas-Guzman.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Defendant Jose Guadalupe Rojas-Guzman is not even obligated to produce any evidence by cross-examining the witnesses for the government.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense--the kind of doubt that would make a reasonable person hesitate to act. Proof

INSTRUCTION NO. 3

Page 1 of 2

1 beyond a reasonable doubt must, therefore, be proof of such a  
2 convincing character that a reasonable person would not hesitate to  
3 rely and act upon it in the most important of his or her own  
4 affairs. Unless the government proves, beyond a reasonable doubt,  
5 that defendant Jose Guadalupe Rojas-Guzman has committed each and  
6 every element of the offense charged in the indictment, you must  
7 find defendant Jose Guadalupe Rojas-Guzman not guilty of the  
8 offense. If the jury views the evidence in the case as reasonably  
9 permitting either of two conclusions--one of innocence, the other  
10 of guilt--the jury must, of course, adopt the conclusion of  
11 innocence.

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27 INSTRUCTION NO. 2

28 Page 2 of 2



**REASONABLE DOUBT - DEFINED**

Proof beyond a reasonable doubt is proof that leaves you firmly convinced defendant Jose Guadalupe Rojas-Guzman is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that defendant Jose Guadalupe Rojas-Guzman is guilty, it is your duty to find defendant Jose Guadalupe Rojas-Guzman not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that defendant Jose Guadalupe Rojas-Guzman is guilty, it is your duty to find defendant Jose Guadalupe Rojas-Guzman guilty.

**WHAT IS EVIDENCE**

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence.

INSTRUCTION NO. 6

**WHAT IS NOT EVIDENCE**

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.
3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

**OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT**

You have heard evidence that defendant Jose Guadalupe Rojas-Guzman committed other crimes, wrongs, or acts not charged here. You may consider this evidence only for its bearing, if any, on the question of defendant Jose Guadalupe Rojas-Guzman's intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake or accident, and for no other purpose. You may not consider this evidence as evidence of guilt of the crime for which defendant Jose Guadalupe Rojas-Guzman is now on trial.

1                   JURY TO BE GUIDED BY OFFICIAL ENGLISH  
2           TRANSLATION/INTERPRETATION TRANSCRIPT OF RECORDING IN FOREIGN  
3                   LANGUAGE (ACCURACY IN DISPUTE)

4           You have listened to tape recordings in Spanish. You have  
5           been provided transcripts of these recordings. The transcripts  
6           were provided to you by the government so that you could consider  
7           the content of the recordings. The transcripts are an English  
8           translation of the foreign language tape recordings.

9           Whether a transcript is an accurate translation, in whole or  
10          in part, is for you to decide. In considering whether a transcript  
11          accurately describes the meaning of a conversation, you should  
12          consider the testimony presented to you regarding how, and by whom,  
13          the transcript was made. You may consider the knowledge, training,  
14          and experience of the translator, as well as the nature of the  
15          conversation and the reasonableness of the translation in light of  
16          all the evidence in the case. You should not rely in any way on  
17          any knowledge you may have of the language spoken on the recording;  
18          your consideration of the transcripts should be based on the  
19          evidence introduced in the trial.

**CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the witness's opportunity and ability to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case, if any;
5. the witness's bias or prejudice, if any;
6. whether other evidence contradicted the witness's testimony;
7. the reasonableness of the witness's testimony in light of all the evidence; and
8. any other factors that bear on believability.

The weight of the evidence as to a fact does not depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

**OPINION EVIDENCE, EXPERT WITNESS**

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 12



**GOVERNMENT'S USE OF UNDERCOVER AGENTS AND INFORMANTS**

You have heard testimony about the government's use of informants and confidential sources who were involved in the government's investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of informants and confidential sources, in order to investigate criminal activities.

1     **TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES - IMMUNITY,**  
2                             **BENEFITS, ACCOMPLICE, PLEA**

3             You have heard testimony from Mario Lopez-Fernandez, a witness  
4 who pleaded guilty to a crime arising out of the same events for  
5 which defendant Jose Guadalupe Rojas-Guzman is on trial. This  
6 guilty plea is not evidence against defendant Jose Guadalupe Rojas-  
7 Guzman, and you may consider it only in determining this witness's  
8 believability.

9             For this reason, in evaluating the testimony of Mario Lopez-  
10 Fernandez, you should consider the extent to which or whether his  
11 testimony may have been influenced by this factor. In addition,  
12 you should examine the testimony of Mr. Lopez-Fernandez with  
13 greater caution than that of other witnesses.

**DEFENDANT'S DECISION NOT TO TESTIFY**

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that defendant Jose Guadalupe Rojas-Guzman did not testify.

INSTRUCTION NO. 15

**ALL PERSONS, ALL MATTERS INVOLVED**

The law does not require the parties to call as witnesses all persons involved in the case who may have been present at any time or place, or who may appear to have some knowledge of the matters at issue in this trial. Nor does the law require the parties to produce as exhibits, all matters and things mentioned during the course of the trial.

**DISPOSITION OF CHARGE AGAINST CODEFENDANTS**

For reasons that do not concern you, the case against the codefendant is not before you. Do not speculate why. This fact should not influence your verdicts with reference to the remaining defendant, and you must base your verdicts solely on the evidence against the remaining defendant, Jose Guadalupe Rojas-Guzman.

INSTRUCTION NO. 18



COUNT THREE

On or about September 11, 2010, in the State and District of Nevada,

JOSE GUADALUPE ROJAS-GUZMAN, a/k/a ANGEL,  
and  
MARIO ADRIAN LOPEZ-FERNANDEZ, a/k/a MARIO,

defendants herein, did knowingly possess with intent to distribute fifty (50) grams or more of actual methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A); and Title 18, United States Code, Section 2.

INSTRUCTION NO. 19

**COUNT ONE - CONSPIRACY - ELEMENTS**

Defendant Jose Guadalupe Rojas-Guzman is charged in Count One of the Superseding Indictment with conspiracy to possess with intent to distribute and to distribute a controlled substance, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846, and 18 U.S.C. § 2. In order for defendant Jose Guadalupe Rojas-Guzman to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First: Beginning on an unknown date, but not later than September 7, 2010, and continuing until on or about September 11, 2010, there was an agreement between two or more persons to commit at least one crime as charged in the Superseding Indictment; and

Second: Defendant Jose Guadalupe Rojas-Guzman joined in the agreement knowing at least one of its objects and intending to help accomplish it.

I shall discuss with you briefly the law relating to each of these elements.

INSTRUCTION NO. 21

Page 1 of 2



1       A conspiracy is a kind of criminal partnership--an agreement  
2 of two or more persons to commit one or more crimes. The crime is  
3 the agreement to do something unlawful; it does not matter whether  
4 the crime agreed upon was committed.

5       For a conspiracy to have existed, it is not necessary that the  
6 conspirators made a formal agreement or that they agreed on every  
7 detail of the conspiracy. It is not enough, however, that they  
8 simply met, discussed matters of common interest, acted in similar  
9 ways, or perhaps helped one another. You must find that there was  
10 a plan to commit at least one of the crimes alleged in the  
11 Superseding Indictment as an object of the conspiracy with all of  
12 you agreeing as to the particular crime which the conspirators  
13 agreed to commit.

14       One becomes a member of a conspiracy by willfully  
15 participating in the unlawful plan with the intent to advance or  
16 further some object or purpose of the conspiracy, even though the  
17 person does not have full knowledge of all the details of the  
18 conspiracy. Furthermore, one who willfully joins an existing  
19 conspiracy is as responsible for it as the originators. On the  
20 other hand, one who has no knowledge of a conspiracy, but happens  
21 to act in a way which furthers some object or purpose of the  
22 conspiracy, does not thereby become a conspirator. Similarly, a  
23 person does not become a conspirator merely by associating with one  
24 or more persons who are conspirators, nor merely by knowing that a  
25 conspiracy exists.

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27                                   INSTRUCTION NO. 21

28                                   Page 2 of 2

1                                   **CONTROLLED SUBSTANCE—**  
2                                   **CONSPIRACY TO DISTRIBUTE OR MANUFACTURE**  
3                                   **(21 U.S.C. §§ 841(a) and 846)**

4           Defendant Jose Guadalupe Rojas-Guzman is charged in Count One  
5 of the superseding indictment with conspiracy to possess with the  
6 intent to distribute methamphetamine in violation of Section 841(a)  
7 and Section 846 of Title 21 of the United States Code. In order  
8 for defendant Jose Guadalupe Rojas-Guzman to be found guilty of  
9 that charge, the government must prove each of the following  
10 elements beyond a reasonable doubt:

11           Beginning on an unknown date, but not later than September 7,  
12 2010, and continuing up to and including September 11, 2010, in the  
13 State and Federal District of Nevada, there was an agreement  
14 between two or more persons to possess with the intent to  
15 distribute methamphetamine; and

16           Second, defendant Jose Guadalupe Rojas-Guzman joined in the  
17 agreement knowing of its purpose and intending to help accomplish  
18 that purpose.

19           To "possess with intent to distribute" means to possess with  
20 intent to deliver or transfer possession of methamphetamine to  
21 another person, with or without any financial interest in the  
22 transaction.

23           A conspiracy is a kind of criminal partnership—an agreement of  
24 two or more persons to commit one or more crimes. The crime of  
25 conspiracy is the agreement to do something unlawful; it does not  
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27                                   INSTRUCTION NO. 22

28                                   Page 1 of 2

1 matter whether the crime agreed upon was committed.

2 For a conspiracy to have existed, it is not necessary that the  
3 conspirators made a formal agreement or that they agreed on every  
4 detail of the conspiracy. It is not enough, however, that they  
5 simply met, discussed matters of common interest, acted in similar  
6 ways, or perhaps helped one another. You must find that there was  
7 a plan to commit at least one of the crimes alleged in the  
8 indictment as an object or purpose of the conspiracy with all of  
9 you agreeing as to the particular crime which the conspirators  
10 agreed to commit.

11 One becomes a member of a conspiracy by willfully  
12 participating in the unlawful plan with the intent to advance or  
13 further some object or purpose of the conspiracy, even though the  
14 person does not have full knowledge of all the details of the  
15 conspiracy. Furthermore, one who willfully joins an existing  
16 conspiracy is as responsible for it as the originators. On the  
17 other hand, one who has no knowledge of a conspiracy, but happens  
18 to act in a way which furthers some object or purpose of the  
19 conspiracy, does not thereby become a conspirator. Similarly, a  
20 person does not become a conspirator merely by associating with one  
21 or more persons who are conspirators, nor merely by knowing that a  
22 conspiracy exists.

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INSTRUCTION NO. 22

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Page 2 of 2

**CONSPIRACY—KNOWLEDGE OF AND  
ASSOCIATION WITH OTHER CONSPIRATORS**

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with the other defendants or other conspirators in the overall scheme, defendant Jose Guadalupe Rojas-Guzman has, in effect, agreed to participate in the conspiracy if the government proves each of the following beyond a reasonable doubt that:

(1) defendant Jose Guadalupe Rojas-Guzman directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy;

(2) defendant Jose Guadalupe Rojas-Guzman or had reason to know that other conspirators were involved with those with whom defendant Jose Guadalupe Rojas-Guzman directly conspired; and

(3) defendant Jose Guadalupe Rojas-Guzman had reason to believe that whatever benefits defendant Jose Guadalupe Rojas-Guzman might get from the conspiracy were probably dependent upon the success of the entire venture.

It is not a defense that a person's participation in a conspiracy was minor or for a short period of time.

**CONSPIRACY - DEFINED**

A criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail.

The government must prove that defendant Jose Guadalupe Rojas-Guzman and at least one other person knowingly and deliberately arrived at some type of agreement or understanding that they, and perhaps others, would violate a law of the United States by means of some common plan or course of action as alleged in Count One of the Superseding Indictment. It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy.

To prove the existence of a conspiracy or an illegal agreement, the government is not required to produce a written contract between the parties or even produce evidence of an express oral agreement spelling out all of the details of the understanding. To prove that a conspiracy existed, moreover, the government is not required to show that all of the people named in

1 the Superseding Indictment as members of the conspiracy were, in  
2 fact, parties to the agreement, or that all of the members of the  
3 alleged conspiracy were named or charged, or that all of the people  
4 whom the evidence shows were actually members of a conspiracy  
5 agreed to all of the means or methods set out in the Superseding  
6 Indictment.

7 Unless the government proves beyond a reasonable doubt that a  
8 conspiracy, as just explained, actually existed, then you must  
9 acquit defendant Jose Guadalupe Rojas-Guzman of the charge  
10 contained in Count One of the Superseding Indictment.

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27 INSTRUCTION NO. 24

28 Page 2 of 2

**KNOWINGLY-DEFINED**

An act is done knowingly if the defendant is aware of the act and does not act or fails to act through ignorance, mistake, or accident. The government is not required to prove that defendant Jose Guadalupe Rojas-Guzman knew that his acts or omissions were unlawful. You may consider evidence of defendant Jose Guadalupe Rojas-Guzman's words, acts, or omissions, along with all the other evidence, in deciding whether defendant Jose Guadalupe Rojas-Guzman acted knowingly.

**ACTS AND DECLARATIONS OF CO-CONSPIRATORS**

Evidence has been received in this case that certain persons, who are alleged in Count One of the Superseding Indictment to be co-conspirators of defendant Jose Guadalupe Rojas-Guzman, have done or said things during the existence or life of the alleged conspiracy in order to further or advance its goal.

Such acts and statements of these other individuals may be considered by you in determining whether or not the government has proven the charge in Count One of the Superseding Indictment against defendant Jose Guadalupe Rojas-Guzman.

Since these acts may have been performed and these statements may have been made outside the presence of defendant Jose Guadalupe Rojas-Guzman and even done or said without defendant Jose Guadalupe Rojas-Guzman's knowledge, these acts or statements should be examined with particular care by you before considering them against defendant Jose Guadalupe Rojas-Guzman who did not do the particular act or make the particular statement.



**SUCCESS OF CONSPIRACY IMMATERIAL**

The government is not required to prove that the parties to or members of the agreement or conspiracy were successful in achieving any or all of the objects of the agreement or conspiracy.

COUNT TWO - DISTRIBUTION - ELEMENTS

Defendant Jose Guadalupe Rojas-Guzman is charged in Count Two of the Superseding Indictment with distribution of 50 grams or more of a controlled substance, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). In order for defendant Jose Guadalupe Rojas-Guzman to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First: defendant Jose Guadalupe Rojas-Guzman knowingly distributed methamphetamine; and

Second: defendant Jose Guadalupe Rojas-Guzman knew that it was methamphetamine or some other prohibited drug.

"Distributing" means delivering or transferring possession of methamphetamine to another person, with or without any financial interest in that transaction.

To find defendant Jose Guadalupe Rojas-Guzman guilty of Count Two, the government is not required to prove the amount or quantity of methamphetamine. It need only prove beyond a reasonable doubt that there was a measurable or detectable amount of methamphetamine.

1 TO DISTRIBUTE - DEFINED

2 The term "to distribute," as used in these instructions, means  
3 to deliver or to transfer possession or control of something from  
4 one person to another.

5 The term "to distribute" includes the sale of something by one  
6 person to another.

**COUNT THREE - POSSESSION - ELEMENTS**

Defendant Jose Guadalupe Rojas-Guzman is charged in Count Three of the Superseding Indictment with possession of a controlled substance, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). In order for defendant Jose Guadalupe Rojas-Guzman to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First: defendant Jose Guadalupe Rojas-Guzman knowingly possessed methamphetamine; and

Second: defendant Jose Guadalupe Rojas-Guzman possessed it with the intent to distribute it to another person.

To find defendant Jose Guadalupe Rojas-Guzman guilty of Count Three, the government is not required to prove the amount or quantity of methamphetamine. It need only prove beyond a reasonable doubt that there was a measurable or detectable amount of methamphetamine.

It does not matter whether defendant Jose Guadalupe Rojas-Guzman knew that the substance was methamphetamine. It is sufficient that defendant Jose Guadalupe Rojas-Guzman knew that it was some kind of a prohibited drug.

To "possess with intent to distribute" means to possess with intent to deliver or transfer possession of methamphetamine to another person, with or without any financial interest in the transaction.

**POSSESSION-DEFINED**

A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

**DETERMINING AMOUNT OF CONTROLLED SUBSTANCE**

If you find defendant Jose Guadalupe Rojas-Guzman guilty of the charge in Count One, Two, and/or Three of the Superseding Indictment, you are then to determine whether the government proved beyond a reasonable doubt that the amount of actual methamphetamine equaled or exceeded fifty (50) grams. Your determination of weight must not include the weight of any packaging material. Your decision as to weight must be unanimous.

The government does not have to prove that defendant Jose Guadalupe Rojas-Guzman knew the quantity of methamphetamine.

**AIDING AND ABETTING**

Defendant Jose Guadalupe Rojas-Guzman may be found guilty of any crime charged in the Superseding Indictment, even if defendant Jose Guadalupe Rojas-Guzman personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove defendant Jose Guadalupe Rojas-Guzman guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First: the crime charged was committed by someone;

Second: defendant Jose Guadalupe Rojas-Guzman knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit each element of the crime charged; and

Third: defendant Jose Guadalupe Rojas-Guzman acted before the crime was completed. It is not enough that defendant Jose Guadalupe Rojas-Guzman merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that defendant Jose Guadalupe Rojas-Guzman acted with the knowledge and intention of helping that person commit the crime charged.

The government is not required to prove precisely which defendant actually committed the crime and which defendant Jose Guadalupe Rojas-Guzman aided and abetted.

**MERE PRESENCE**

Mere presence at the scene of a crime or mere knowledge that a crime is being committed is not sufficient to establish that defendant Jose Guadalupe Rojas-Guzman committed the crimes of: Count One, Conspiracy to Possess with Intent to Distribute and to Distribute a Controlled Substance (Methamphetamine); Count Two, Distribution of a Controlled Substance (Methamphetamine); and Count Three, Possession with Intent to Distribute a Controlled Substance (Methamphetamine). Defendant Jose Guadalupe Rojas-Guzman must be a participant and not merely a knowing spectator. Defendant Jose Guadalupe Rojas-Guzman's presence may be considered by the jury along with other evidence in the case.



1                   **8.25 CONSPIRACY-LIABILITY FOR SUBSTANTIVE OFFENSE**  
2                   **COMMITTED BY CO-CONSPIRATOR (PINKERTON CHARGE)**

3           Each member of the conspiracy is responsible for the actions  
4 of the other conspirators performed during the course and in  
5 furtherance of the conspiracy. If one member of a conspiracy  
6 commits a crime in furtherance of a conspiracy, the other members  
7 have also, under the law, committed that crime.

8           Therefore, you may find defendant Jose Guadalupe Rojas-Guzman  
9 guilty of Count Two, distribution of methamphetamine in violation  
10 of Section 841(a)(1) and (b)(1)(A) of Title 21 of the United States  
11 Code and/or Count Three, possession with the intent to distribute  
12 methamphetamine in violation Section 841(a)(1) and (b)(1)(A) of  
13 Title 21 of the United States Code, as charged in the superseding  
14 indictment if the government has proved each of the following  
15 elements beyond a reasonable doubt:

16           First, a person named in Count Two and/or Count Three of the  
17 superseding indictment committed the crime of distribution of  
18 methamphetamine in violation of Section 841(a)(1) and (b)(1)(A) of  
19 Title 21 of the United States Code, and/or possession with the  
20 intent to distribute methamphetamine in violation Section 841(a)(1)  
21 and (b)(1)(A) of Title 21 of the United States Code, as alleged in  
22 that count;

23           Second, the person was a member of the conspiracy charged in  
24 Count One of the superseding indictment;

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26                                   INSTRUCTION NO. 40

27                                   Page 1 of 2  
28

1 Third, the person committed the crime of distribution of  
2 methamphetamine in violation of Section 841(a)(1) and (b)(1)(A) of  
3 Title 21 of the United States Code and/or possession with the  
4 intent to distribute methamphetamine in violation Section 841(a)(1)  
5 and (b)(1)(A) of Title 21 of the United States Code as charged in  
6 the superseding indictment in furtherance of the conspiracy;

7 Fourth, defendant Jose Guadalupe Rojas-Guzman was a member of  
8 the same conspiracy at the time the offense charged in Count Two  
9 and/or Count Three was committed; and

10 Fifth, the offense fell within the scope of the unlawful  
11 agreement and could reasonably have been foreseen to be a necessary  
12 or natural consequence of the unlawful agreement.

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INSTRUCTION NO. 40

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Page 2 of 2

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**SEPARATE CONSIDERATION OF MULTIPLE COUNTS—SINGLE DEFENDANT**

A separate crime is charged against defendant Jose Guadalupe Rojas-Guzman in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

1 VERDICT - ELECTION OF PRESIDING JUROR - DUTY TO DELIBERATE -  
2 UNANIMITY - PUNISHMENT - FORM OF VERDICT - COMMUNICATION WITH THE  
3 COURT

4 Upon retiring to your jury room to begin your deliberation,  
5 you must elect one of your members to act as your presiding juror.  
6 The presiding juror will preside over your deliberations and will  
7 be your spokesperson here in court.

8 Your verdict must represent the collective judgment of the  
9 jury. In order to return a verdict, it is necessary that each juror  
10 agree to it. Your verdict, in other words, must be unanimous as to  
11 each count.

12 It is your duty as jurors to consult with one another and to  
13 deliberate with one another with a view towards reaching an  
14 agreement, if you can do so without violence to individual  
15 judgment. Each of you must decide the case for himself and herself,  
16 but do so only after an impartial consideration of the evidence in  
17 the case with your fellow jurors. In the course of your  
18 deliberations, do not hesitate to reexamine your own views and to  
19 change your opinion if convinced it is erroneous. Do not surrender  
20 your honest conviction, however, solely because of the opinion of  
21 your fellow jurors or for the mere purpose of thereby being able to  
22 return a unanimous verdict.

23 Remember at all times that you are not partisans. You are  
24 judges--judges of the facts of this case. Your sole interest is to  
25 seek the truth from the evidence received during the trial.

26  
27 INSTRUCTION NO. 42

28 Page 1 of 3

1 Your verdict must be based solely upon the evidence received  
2 in the case. Nothing you have seen or read outside of court may be  
3 considered. Nothing that I have said or done during the course of  
4 this trial is intended in any way to somehow suggest to you what I  
5 think your verdict should be. Nothing said in these instructions  
6 and nothing in any form of verdict, which has been prepared for  
7 your convenience, is to suggest or convey to you in any way or  
8 manner any intimation as to what verdict I think you should return.  
9 What the verdict shall be is the exclusive duty and responsibility  
10 of the jury. As I have told you many times, you are the sole judges  
11 of the facts.

12 The punishment provided by law for the offenses charged in the  
13 indictment is a matter exclusively within the province of the Court  
14 and should never be considered by the jury in any way in arriving  
15 at an impartial verdict as to the offenses charged.

16 A form of verdict has been prepared for your convenience.

17 [The form of verdict will be read to the jury.]

18 You will take this form to the jury room and, when you have  
19 reached unanimous agreement as to your verdicts, you will have your  
20 presiding juror write your verdicts, date and sign the forms, and  
21 then return with your verdicts to the courtroom.

22 If it becomes necessary during your deliberations to  
23 communicate with the Court, you may send a note through the  
24 bailiff, signed by any one of you. No member of the jury should  
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26 INSTRUCTION NO. 42

27 Page 2 of 3

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1 ever attempt to communicate with the Court except by a signed  
2 writing, and the Court will respond to the jury concerning the case  
3 only in writing or here in open court. If you send out a question,  
4 the Court will consult with the lawyers before answering it, which  
5 may take some time. You may continue your deliberations while  
6 waiting for the answer to any question.

7       You will note from the oath about to be taken by the bailiffs  
8 that they too, as well as all other persons, are forbidden to  
9 communicate in any way or manner with any member of the jury  
10 concerning the evidence, your opinions, or the deliberations.

11       Bear in mind also that you are never to reveal to any  
12 person--not even to the Court--how the jury stands, numerically or  
13 otherwise, on the question of whether or not the government has  
14 sustained its burden of proof until after you have reached a  
15 unanimous verdict.

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25 INSTRUCTION NO. 42

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Exhibit B

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3 **UNITED STATES DISTRICT COURT**

4 **DISTRICT OF NEVADA**

5  
6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 JOSE GUADALUPE ROJAS-GUZMAN,

10 Defendant.  
11

) 3:10-cr-00109-ECR-WGC

) VERDICT FORM

12  
13 We, the jury, empaneled in the above-captioned case upon our oath do hereby state that we find  
14 the following unanimous verdicts:

15 Count One

16 Our verdict as to Count One - Conspiracy to Possess with the Intent to Distribute and to  
17 Distribute a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and  
18 (b)(1)(A) and 846, or Aiding and Abetting in violation of Title 18, United States Code, Section 2, is as  
19 follows:

20 Defendant Jose Guadalupe Rojas-Guzman

21 \_\_\_\_\_  
(Not Guilty / Guilty)

22  
23 If you find the defendant not guilty, do not consider the following paragraph, and proceed to the  
24 next count. If you find the defendant guilty as charged, proceed to the next paragraph below.

25  
26 We, the Jury, having found the defendant guilty of the offense charged in Count One of the  
27 superseding indictment, further unanimously find that he conspired to possess with intent to distribute  
28 methamphetamine in the amount shown (*place an X in the appropriate box*):



Actual Methamphetamine—

- (i) Weighing 50 grams or more [ ]
- (ii) Weighing at least 5 grams but less than 50 grams [ ]
- (iii) Weighing less than 5 grams [ ]

Count Two

Our verdict as to Count Two - Distribution of a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A), or Aiding and Abetting in violation of Title 18, United States Code, Section 2, is as follows:

Defendant Jose Guadalupe Rojas-Guzman

\_\_\_\_\_  
(Not Guilty / Guilty)

If you find the defendant not guilty, do not consider the following paragraph, and proceed to the next count. If you find the defendant guilty as charged, proceed to the next paragraph below.

We, the Jury, having found the defendant guilty of the offense charged in Count Two of the superseding indictment, further unanimously find that he distributed methamphetamine in the amount shown (*place an X in the appropriate box*):

Actual Methamphetamine—

- (i) Weighing 50 grams or more [ ]
- (ii) Weighing at least 5 grams but less than 50 grams [ ]
- (iii) Weighing less than 5 grams [ ]

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Count Three

Our verdict as to Count Three - Possession with Intent to Distribute a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A), or Aiding and Abetting in violation of Title 18, United States Code, Section 2, is as follows:

Defendant Jose Guadalupe Rojas-Guzman

\_\_\_\_\_  
(Not Guilty / Guilty)

If you find the defendant not guilty, do not consider the following paragraph, and proceed to the next count. If you find the defendant guilty as charged, proceed to the next paragraph below.

We, the Jury, having found the defendant guilty of the offense charged in Count Three of the superseding indictment, further unanimously find that he possessed with the intent to distribute methamphetamine in the amount shown (*place an X in the appropriate box*):

Actual Methamphetamine—

- |       |  |     |
|-------|--|-----|
| (i)   | Weighing 50 grams or more                        | [ ] |
| (ii)  | Weighing at least 5 grams but less than 50 grams | [ ] |
| (iii) | Weighing less than 5 grams                       | [ ] |

DATED: \_\_\_\_\_

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Presiding Juror

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Exhibit C

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**United States v. Rojas-Guzman**  
**3:10-cr-109-ECR-WGC**

**Proposed Jury Instructions-All (Pre-Hearing)**

1                                   **INTRODUCTION TO THE FINAL CHARGE**

2           Members of the Jury:

3           Now that you have heard all of the evidence that is to be  
4 received in this trial and each of the arguments of counsel it  
5 becomes my duty to give you the final instructions of the Court as  
6 to the law that is applicable to this case. You should use these  
7 instructions to guide you in your decisions.

8           All of the instructions of law given to you by the  
9 Court--those given to you at the beginning of the trial, those  
10 given to you during the trial, and these final instructions--must  
11 guide and govern your deliberations.

12          It is your duty as jurors to follow the law as stated in all  
13 of the instructions of the Court and to apply these rules of law to  
14 the facts as you find them to be from the evidence received during  
15 the trial.

16          Counsel have quite properly referred to some of the applicable  
17 rules of law in their closing arguments to you. If, however, any  
18 difference appears to you between the law as stated by counsel and  
19 that as stated by the Court in these instructions, you, of course,  
20 are to be governed by the instructions given to you by the Court.

21          You are not to single out any one instruction alone as stating  
22 the law, but must consider the instructions as a whole in reaching  
23 your decisions.

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26                                   INSTRUCTION NO. 1

27                                   Page 1 of 2  
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1       Neither are you to be concerned with the wisdom of any rule of  
2 law stated by the Court. Regardless of any opinion you may have as  
3 to what the law ought to be, it would be a violation of your sworn  
4 duty to base any part of your verdict upon any other view or  
5 opinion of the law other than that given in these instructions of  
6 the Court just as it would be a violation of your sworn duty, as  
7 the judges of the facts, to base your verdict upon anything but the  
8 evidence received in the case.

9       You were chosen as jurors for this trial in order to evaluate  
10 all of the evidence received and to decide each of the factual  
11 questions presented by the allegations brought by the government in  
12 the indictment and the plea of not guilty by Jose Guadalupe Rojas-  
13 Guzman.

14       In resolving the issues presented to you for decision in this  
15 trial you must not be persuaded by bias, prejudice, or sympathy for  
16 or against any of the parties to this case or by any public  
17 opinion.

18       Justice--through trial by jury--depends upon the willingness  
19 of each individual juror to seek the truth from the same evidence  
20 presented to all the jurors here in the courtroom and to arrive at  
21 a verdict by applying the same rules of law as now being given to  
22 each of you in these instructions of the Court.

23

24 Federal Jury Practice and Instructions, 5th Ed., § 12.01

25 Court's Proposed Jury Instruction No. 1

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INSTRUCTION NO. 1

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Page 2 of 2

**DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.1  
(2010)  
Government's Proposed Instruction No. 1

1           **PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT**

2           I instruct you that you must presume the defendant to be  
3 innocent of the crime charged. Thus the defendant, although accused  
4 of crimes in the indictment, begins the trial with a "clean  
5 slate"--with no evidence against him. The indictment, as you  
6 already know, is not evidence of any kind. The defendant is, of  
7 course, not on trial for any act or crime not contained in the  
8 indictment. The law permits nothing but legal evidence presented  
9 before the jury in court to be considered in support of any charge  
10 against the defendant. The presumption of innocence alone,  
11 therefore, is sufficient to acquit the defendant.

12           The burden is always upon the prosecution to prove guilt  
13 beyond a reasonable doubt. This burden never shifts to a defendant  
14 for the law never imposes upon a defendant in a criminal case the  
15 burden or duty of calling any witnesses or producing any evidence.  
16 The defendant is not even obligated to produce any evidence by  
17 cross-examining the witnesses for the government.

18           It is not required that the government prove guilt beyond all  
19 possible doubt. The test is one of reasonable doubt. A reasonable  
20 doubt is a doubt based upon reason and common sense--the kind of  
21 doubt that would make a reasonable person hesitate to act. Proof  
22 beyond a reasonable doubt must, therefore, be proof of such a  
23 convincing character that a reasonable person would not hesitate to  
24 rely and act upon it in the most important of his or her own  
25 affairs.

26  
27                                   INSTRUCTION NO. 3

28                                   Page 1 of 2



1 Unless the government proves, beyond a reasonable doubt, that  
2 the defendant has committed each and every element of the offense  
3 charged in the indictment, you must find the defendant not guilty  
4 of the offense. If the jury views the evidence in the case as  
5 reasonably permitting either of two conclusions--one of innocence,  
6 the other of guilt--the jury must, of course, adopt the conclusion  
7 of innocence.

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24 Federal Jury Practice and Instructions, 5th Ed., § 12.10  
25 Court's Proposed Jury Instruction No. 2

26  
27 INSTRUCTION NO. 3

28 Page 2 of 2

1 CHARGE AGAINST DEFENDANT  
2 NOT EVIDENCE—PRESUMPTION OF  
3 INNOCENCE—BURDEN OF PROOF

4 The superseding indictment is not evidence. The defendant has  
5 pleaded not guilty to the charges. The defendant is presumed to be  
6 innocent unless and until the government proves the defendant's  
7 guilty beyond a reasonable doubt. In addition, the defendant does  
8 not have to testify or present any evidence to prove innocence.  
9 The government has the burden of proving every element of the  
10 charges beyond a reasonable doubt.

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24 Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.2  
25 (2010)  
26 Government's Proposed Instruction No. 2  
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28 INSTRUCTION NO. 4

**REASONABLE DOUBT - DEFINED**

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.5  
(2010)  
Government's Proposed Instruction No. 5

**WHAT IS EVIDENCE**

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.6  
(2010)  
Government's Proposed Instruction No. 6

INSTRUCTION NO. 6

**WHAT IS NOT EVIDENCE**

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.
3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.7  
(2010)

Government's Proposed Instruction No. 7

INSTRUCTION NO. 7

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.8  
(2010)  
Government's Proposed Instruction No. 8

**OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT**

You have heard evidence that the defendant committed other crimes, wrongs, or acts not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake, absence of accident and for no other purpose. You may not consider this evidence as evidence of guilt of the crime for which the defendant is now on trial.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 4.3  
(2010)  
Government's Proposed Instruction No. 13

**JURY TO BE GUIDED BY OFFICIAL  
ENGLISH TRANSLATION/INTERPRETATION**

The Spanish language has been used during this trial.

The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know the Spanish language, it is important that all jurors consider the same evidence. Therefore, you must accept the evidence presented in the English interpretation and disregard any different meaning.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.19  
(2010)  
Government's Proposed Instruction No. 12

INSTRUCTION NO. 10



**CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the witness's opportunity and ability to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case, if any;
5. the witness's bias or prejudice, if any;
6. whether other evidence contradicted the witness's testimony;
7. the reasonableness of the witness's testimony in light of all the evidence; and
8. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.9  
(2010)

Government's Proposed Instruction No. 9

**OPINION EVIDENCE, EXPERT WITNESS**

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 4.14  
(2010)  
Government's Proposed Instruction No. 16

1 **GOVERNMENT'S USE OF UNDERCOVER AGENTS AND INFORMANTS**

2       You have heard testimony from an undercover agents and informants  
3 who was involved in the government's investigation in this case. Law  
4 enforcement officials may engage in stealth and deception, such as the  
5 use of informants and undercover agents, in order to investigate  
6 criminal activities. Undercover agents and informants may use false  
7 names and appearances and assume the roles of members in criminal  
8 organizations.

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24 Ninth Circuit Manual of Model Jury Instructions, Criminal, § 4.10  
25 (2010)  
26 Government's Proposed Instruction No. 15  
27

1           **TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES—**

2                   **IMMUNITY, BENEFITS, ACCOMPLICE, PLEA**

3           You have heard testimony from a Confidential Source, a witness  
4 who received compensation from the government in connection with  
5 this case.

6           For this reason, in evaluating the testimony of the  
7 Confidential Source, you should consider the extent to which or  
8 whether his testimony may have been influenced by this factor. In  
9 addition, you should examine the testimony of the Confidential  
10 Source with greater caution than that of other witnesses.

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24 Ninth Circuit Manual of Model Jury Instructions, Criminal, § 4.9  
25 (2010)  
26 Government's Proposed Instruction No. 14  
27

**DEFENDANT'S DECISION NOT TO TESTIFY**

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.3  
(2010)  
Government's Proposed Instruction No. 3

**DEFENDANT'S DECISION TO TESTIFY**

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.4  
(2010)  
Government's Proposed Instruction No. 4

INSTRUCTION NO. 16

**ALL PERSONS, ALL MATTERS INVOLVED**

The law does not require the government to call as witnesses all persons involved in the case who may have been present at any time or place, or who may appear to have some knowledge of the matters at issue in this trial. Nor does the law require the government to produce as exhibits, all matters and things mentioned during the course of the trial.

*United States v. Snow*, 521 F.2d 730, 736 (9<sup>th</sup> Cir. 1975)  
Government's Proposed Instruction No. 17

INSTRUCTION NO. 17

**DISPOSITION OF CHARGE AGAINST CODEFENDANTS**

For reasons that do not concern you, the case against the codefendant is not before you. Do not speculate why. This fact should not influence your verdicts with reference to the remaining defendant, and you must base your verdicts solely on the evidence against the remaining defendant.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 2.14  
(2010)  
Government's Proposed Instruction No. 11

INSTRUCTION NO. 18





COUNT THREE

On or about September 11, 2010, in the State and District of Nevada,

JOSE GUADALUPE ROJAS-GUZMAN, a/k/a ANGEL,  
and  
MARIO ADRIAN LOPEZ-FERNANDEZ, a/k/a MARIO,

defendants herein, did knowingly possess with intent to distribute fifty (50) grams or more of actual methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A); and Title 18, United States Code, Section 2.

Superseding Indictment (#70)

Court's Proposed Jury Instruction No. 3

INSTRUCTION NO. 19

1                                   **THE SUPERSEDING INDICTMENT**

2   THE INDICTMENT CHARGES THAT:

3                                   Count One

4           Beginning on an unknown date, but not later than September 7,  
5   2010, and continuing up to and including September 11, 2010, in the  
6   State and Federal District of Nevada,

7                           JOSE GUADALUPE ROJAS-GUZMAN, a/k/a ANGEL,

8                                   and

9                           MARIO ADRIAN LOPEZ-FERNANDEZ, a/k/a MARIO,

10   Defendants herein, did knowingly and intentionally conspire,  
11   confederate and agree with each other and Aurelio Nunes-Molina, and  
12   with others known and unknown, to possess with intent to distribute  
13   and to distribute fifty (50) grams or more of actual  
14   methamphetamine, its salts, isomers, and salts of its isomers, a  
15   Schedule II controlled substance , in violation of Title 21, United  
16   States Code, Sections 841(a)(1), 841(b)(1)(A), and 846, and Title 18,  
17   United States Code, Section 2.

18                                   Count Two

19           On or about September 7, 2010, in the State and District of  
20   Nevada,

21                           JOSE GUADALUPE ROJAS-GUZMAN, a/k/a ANGEL,

22                                   and

23                           MARIO ADRIAN LOPEZ-FERNANDEZ, a/k/a MARIO,

24   Defendants herein, did knowingly distribute fifty (50) grams or  
25   more of actual methamphetamine, its salts, isomers, and salts of  
26   its isomers, a Schedule II controlled substance, in violation of  
27   Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A); and  
28   Title 18, United States Code, Section 2.

Count Three

On or about September 11, 2010, in the State and District of Nevada,

JOSE GUADALUPE ROJAS-GUZMAN, a/k/a ANGEL,

and

MARIO ADRIAN LOPEZ-FERNANDEZ, a/k/a MARIO,

Defendants herein, did knowingly possess with intent to distribute fifty (50) grams or more of actual methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A), and Title 18, United States Code, Section 2.

Superseding Indictment filed August 10, 2011  
Government's Proposed Instruction No. 18

INSTRUCTION NO. 20

**COUNT ONE - CONSPIRACY - ELEMENTS**

The defendant is charged in Count One of the Superseding Indictment with conspiracy to possess with intent to distribute and to distribute a controlled substance, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846, and 18 U.S.C. § 2. In order for the defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: Beginning on an unknown date, but not later than September 7, 2010, and continuing until on or about September 11, 2010, there was an agreement between two or more persons to commit at least one crime as charged in the Superseding Indictment; and

Second: The defendant joined in the agreement knowing at least one of its objects and intending to help accomplish it.

I shall discuss with you briefly the law relating to each of these elements.

A conspiracy is a kind of criminal partnership--an agreement of two or more persons to commit one or more crimes. The crime is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

1 For a conspiracy to have existed, it is not necessary that the  
2 conspirators made a formal agreement or that they agreed on every  
3 detail of the conspiracy. It is not enough, however, that they  
4 simply met, discussed matters of common interest, acted in similar  
5 ways, or perhaps helped one another. You must find that there was  
6 a plan to commit at least one of the crimes alleged in the  
7 Superseding Indictment as an object of the conspiracy with all of  
8 you agreeing as to the particular crime which the conspirators  
9 agreed to commit.

10 One becomes a member of a conspiracy by willfully  
11 participating in the unlawful plan with the intent to advance or  
12 further some object or purpose of the conspiracy, even though the  
13 person does not have full knowledge of all the details of the  
14 conspiracy. Furthermore, one who willfully joins an existing  
15 conspiracy is as responsible for it as the originators. On the  
16 other hand, one who has no knowledge of a conspiracy, but happens  
17 to act in a way which furthers some object or purpose of the  
18 conspiracy, does not thereby become a conspirator. Similarly, a  
19 person does not become a conspirator merely by associating with one  
20 or more persons who are conspirators, nor merely by knowing that a  
21 conspiracy exists.

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24 9th Circuit Model Criminal Jury Instructions 8.20

25 Court's Proposed Jury Instruction No. 6

26  
27 INSTRUCTION NO. 21

28 Page 2 of 2

(21 U.S.C. §§ 841 (a) and 846)

The defendant is charged in Count One of the superseding indictment with conspiracy to possess with the intent to distribute methamphetamine in violation of Section 841(a) and Section 846 of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

Beginning on an unknown date, but not later than September 7, 2010, and continuing up to and including September 11, 2010, in the State and Federal District of Nevada, there was an agreement between two or more persons to possess with the intent to distribute methamphetamine; and

Second, the defendant joined in the agreement knowing of its purpose and intending to help accomplish that purpose.

To "possess with intent to distribute" means to possess with intent to deliver or transfer possession of methamphetamine to another person, with or without any financial interest in the transaction.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar

1 ways, or perhaps helped one another. You must find that there was  
2 a plan to commit at least one of the crimes alleged in the  
3 indictment as an object or purpose of the conspiracy with all of  
4 you agreeing as to the particular crime which the conspirators  
5 agreed to commit.

6 One becomes a member of a conspiracy by willfully  
7 participating in the unlawful plan with the intent to advance or  
8 further some object or purpose of the conspiracy, even though the  
9 person does not have full knowledge of all the details of the  
10 conspiracy. Furthermore, one who willfully joins an existing  
11 conspiracy is as responsible for it as the originators. On the  
12 other hand, one who has no knowledge of a conspiracy, but happens  
13 to act in a way which furthers some object or purpose of the  
14 conspiracy, does not thereby become a conspirator. Similarly, a  
15 person does not become a conspirator merely by associating with one  
16 or more persons who are conspirators, nor merely by knowing that a  
17 conspiracy exists.

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24 Ninth Circuit Manual of Model Jury Instructions, Criminal, § 9.19  
25 (2010) (modified)

26 Government's Proposed Instruction No. 21

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INSTRUCTION NO. 22



**CONSPIRACY—KNOWLEDGE OF AND  
ASSOCIATION WITH OTHER CONSPIRATORS**

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with the other defendants or other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if the government proves each of the following beyond a reasonable doubt that:

(1) the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy;

(2) the defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired; and

(3) the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is not a defense that a person's participation in a conspiracy was minor or for a short period of time.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 8.23  
(2010)

Government's Proposed Instruction No. 22

INSTRUCTION NO. 23

**CONSPIRACY - DEFINED**

A criminal conspiracy is an agreement or a mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail.

The Government must prove that the defendant and at least one other person knowingly and deliberately arrived at some type of agreement or understanding that they, and perhaps others, would violate a law of the United States by means of some common plan or course of action as alleged in Count One of the Superseding Indictment. It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy.

To prove the existence of a conspiracy or an illegal agreement, the Government is not required to produce a written contract between the parties or even produce evidence of an express oral agreement spelling out all of the details of the understanding. To prove that a conspiracy existed, moreover, the Government is not required to show that all of the people named in

INSTRUCTION NO. 24

Page 1 of 2

1 the Superseding Indictment as members of the conspiracy were, in  
2 fact, parties to the agreement, or that all of the members of the  
3 alleged conspiracy were named or charged, or that all of the people  
4 whom the evidence shows were actually members of a conspiracy  
5 agreed to all of the means or methods set out in the Superseding  
6 Indictment.

7 Unless the Government proves beyond a reasonable doubt that a  
8 conspiracy, as just explained, actually existed, then you must  
9 acquit Defendant Jose Guadalupe Rojas-Guzman of the charge  
10 contained in Count One of the Superseding Indictment.

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23 Federal Jury Practice and Instructions, § 31:04

24 Court's Proposed Jury Instruction No. 7

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INSTRUCTION NO. 24

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Page 2 of 2

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**KNOWINGLY-DEFINED**

An act is done knowingly if the defendant is aware of the act and does not act or fails to act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 5.6  
(2010)  
Government's Proposed Instruction No. 20

1                   **ACTS AND DECLARATIONS OF CO-CONSPIRATORS**

2           Evidence has been received in this case that certain persons,  
3 who are alleged in Count One of the Superseding Indictment to be  
4 co-conspirators of Defendant Jose Guadalupe Rojas-Guzman, have done  
5 or said things during the existence or life of the alleged  
6 conspiracy in order to further or advance its goal.

7           Such acts and statements of these other individuals may be  
8 considered by you in determining whether or not the Government has  
9 proven the charge in Count One of the Superseding Indictment  
10 against Defendant Jose Guadalupe Rojas-Guzman.

11          Since these acts may have been performed and these statements  
12 may have been made outside the presence of Defendant and even done  
13 or said without the defendant's knowledge, these acts or statements  
14 should be examined with particular care by you before considering  
15 them against the defendant who did not do the particular act or  
16 make the particular statement.

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25 Federal Jury Practice and Instructions, § 31:06 (5th Ed.)

26 Court's Proposed Jury Instruction No. 8

**SUCCESS OF CONSPIRACY IMMATERIAL**

The Government is not required to prove that the parties to or members of the agreement or conspiracy were successful in achieving any or all of the objects of the agreement or conspiracy.

Federal Jury Practice and Instructions, § 31:08 (5th Ed.).  
Court's Proposed Jury Instruction No. 9

INSTRUCTION NO. 27

COUNT TWO - DISTRIBUTION - ELEMENTS

The defendant is charged in Count Two of the Superseding Indictment with distribution of 50 grams or more of a controlled substance, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). In order for the defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: the defendant knowingly distributed methamphetamine; and

Second: the defendant knew that it was methamphetamine or some other prohibited drug.

"Distributing" means delivering or transferring possession of methamphetamine to another person, with or without any financial interest in that transaction.

To find the defendant guilty of Count Two, the government is not required to prove the amount or quantity of methamphetamine. It need only prove beyond a reasonable doubt that there was a measurable or detectable amount of methamphetamine.

9th Circuit Model Criminal Jury Instructions § 9.18 (modified)  
Court's Proposed Jury Instruction No. 10

INSTRUCTION NO. 28

1                                   **CONTROLLED SUBSTANCE—**  
2                                   **DISTRIBUTION OR MANUFACTURE**  
3                                   **(21 U.S.C. § 841(a)(1))**

4           Defendant is charged in Count Two of the indictment with  
5 distribution of methamphetamine in violation of Section 841(a)(1)  
6 of Title 21 of the United States Code. In order for the defendant  
7 to be found guilty of that charge, the government must prove each  
8 of the following elements beyond a reasonable doubt: First, the  
9 defendant knowingly distributed methamphetamine; and

10          Second, the defendant knew that it was methamphetamine or some  
11 other prohibited drug.

12          "Distributing" means delivering or transferring possession of  
13 methamphetamine to another person, with or without any financial  
14 interest in that transaction.

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24 Ninth Circuit Manual of Model Jury Instructions, Criminal, § 9.18  
25 (2010) (modified)  
26 Government's Proposed Instruction No. 24  
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**COUNT THREE - POSSESSION - ELEMENTS**

The defendant is charged in Count Three of the Superseding Indictment with possession of a controlled substance, methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). In order for the defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

First: the defendant knowingly possessed methamphetamine; and

Second: the defendant possessed it with the intent to distribute it to another person.

To find the defendant guilty of Count Three, the government is not required to prove the amount or quantity of methamphetamine. It need only prove beyond a reasonable doubt that there was a measurable or detectable amount of methamphetamine.

It does not matter whether the defendant knew that the substance was methamphetamine. It is sufficient that the defendant knew that it was some kind of a prohibited drug.

To "possess with intent to distribute" means to possess with intent to deliver or transfer possession of methamphetamine to another person, with or without any financial interest in the transaction.

9th Circuit Model Criminal Jury Instructions § 9.15 (modified)

Court's Proposed Jury Instruction No. 12

CONTROLLED SUBSTANCE—

POSSESSION WITH INTENT TO DISTRIBUTE

(21 U.S.C. § 841(a)(1))

Defendant is charged in Count Three of the indictment with possession of methamphetamine with intent to distribute in violation of Section 841(a)(1) of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly possessed methamphetamine; and

Second, the defendant possessed it with the intent to distribute it to another person.

It does not matter whether the defendant knew that the substance was methamphetamine. It is sufficient that the defendant knew that it was some kind of a prohibited drug.

To "possess with intent to distribute" means to possess with intent to deliver or transfer possession of methamphetamine to another person, with or without any financial interest in the transaction.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 9.15  
(2010) (modified)

Government's Proposed Instruction No. 25

**POSSESSION-DEFINED**

A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.17  
(2010)  
Government's Proposed Instruction No. 26

**DETERMINING AMOUNT OF CONTROLLED SUBSTANCE**

If you find the defendant guilty of the charge in Count One, Two, and/or Three of the Superseding Indictment, you are then to determine whether the government proved beyond a reasonable doubt that the amount of methamphetamine equaled or exceeded fifty (50) grams. Your determination of weight must not include the weight of any packaging material. Your decision as to weight must be unanimous.

The government does not have to prove that the defendant knew the quantity of methamphetamine.

9th Circuit Model Criminal Jury Instructions § 9.16 (modified)

Court's Proposed Jury Instruction No. 13

**DETERMINING AMOUNT OF CONTROLLED SUBSTANCE**

If you find the defendant guilty of Counts One, Two, or Three of the indictment, you are then to determine whether the government proved beyond a reasonable doubt that the amount of methamphetamine equaled or exceeded the weights as specified in the indictment. Your determination of weight must not include the weight of any packaging material. Your decision as to weight must be unanimous.

The government does not have to prove that the defendant knew the quantity of methamphetamine.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 9.16  
(2010)  
Government's Proposed Instruction No. 27

**AIDING AND ABETTING**

A defendant may be found guilty of any crime charged in the Superseding Indictment, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First: the crime charged was committed by someone;

Second: the defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit each element of the crime charged; and

Third: the defendant acted before the crime was completed. It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit the crime charged.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

9th Circuit Model Criminal Jury Instructions 5.1

Court's Proposed Jury Instruction No. 4

**AIDING AND ABETTING**

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person "aided and abetted" the commission of the offense. Title 18 U.S.C. § 2(a) provides:

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of any of the crimes charged in Counts One, Two, and/or Three of the Superseding Indictment, the government must prove beyond a reasonable doubt that Defendant:

One, knew that the crime charged was to be committed or was being committed;

Two, knowingly did some act for the purpose of aiding, commanding, and/or encouraging the commission of that crime; and

INSTRUCTION NO. 37



Three, acted with the intention of causing the crime charged to be committed.

Before Defendant may be found guilty as an aider or abettor to the crime, the government must also prove, beyond a reasonable doubt, that some person or persons committed each of the essential elements of the offense or offenses charged as detailed for you in other instructions.

Merely being present at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that a defendant aided and abetted the commission of that crime.

The government must prove that Defendant knowingly associated himself with the crime in some way as a participant - someone who wanted the crime to be committed - not as a mere spectator.

Federal Jury Practice and Instructions, § 18:01

Court's Proposed Jury Instruction No. 5

INSTRUCTION NO. 37

Page 2 of 2

**AIDING AND ABETTING**

A defendant may be found guilty of Counts One, Two and/or Three, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, Count One, Two and/or Three was committed by someone;

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit each element of Count One, Two, and/or Three; and

Third, the defendant acted before the crime was completed. It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit Count One, Two, and/or Three.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 5.1 (2010)

Government's Proposed Instruction No. 19

**MERE PRESENCE**

Mere presence at the scene of a crime or mere knowledge that a crime is being committed is not sufficient to establish that the defendant committed the crimes of: Count One, Conspiracy to Possess with Intent to Distribute and to Distribute a Controlled Substance (Methamphetamine); Count Two, Distribution of a Controlled Substance (Methamphetamine); Count Three, Possession with Intent to Distribute a Controlled Substance (Methamphetamine), and Count Four, Aiding and Abetting, Counts One through Three. The defendant must be a participant and not merely a knowing spectator. The defendant's presence may be considered by the jury along with other evidence in the case.

9th Cir. Crim. Jury Instr. 6.10 (2010)  
Defendant's Proposed Instruction No. 1

INSTRUCTION NO. 39

1                   **8.25 CONSPIRACY-LIABILITY FOR SUBSTANTIVE OFFENSE**  
2                   **COMMITTED BY CO-CONSPIRATOR (PINKERTON CHARGE)**

3           Each member of the conspiracy is responsible for the actions  
4 of the other conspirators performed during the course and in  
5 furtherance of the conspiracy. If one member of a conspiracy  
6 commits a crime in furtherance of a conspiracy, the other members  
7 have also, under the law, committed that crime.

8           Therefore, you may find the defendant guilty of Count Two,  
9 distribution of methamphetamine in violation of Section 841(a)(1)  
10 and (b)(1)(A) of Title 21 of the United States Code and/or Count  
11 Three, possession with the intent to distribute methamphetamine in  
12 violation Section 841(a)(1) and (b)(1)(A) of Title 21 of the United  
13 States Code, as charged in the superseding indictment if the  
14 government has proved each of the following elements beyond a  
15 reasonable doubt:

16           First, a person named in Count Two and/or Count Three of the  
17 superseding indictment committed the crime of distribution of  
18 methamphetamine in violation of Section 841(a)(1) and (b)(1)(A) of  
19 Title 21 of the United States Code, and/or possession with the  
20 intent to distribute methamphetamine in violation Section 841(a)(1)  
21 and (b)(1)(A) of Title 21 of the United States Code, as alleged in  
22 that count;

23           Second, the person was a member of the conspiracy charged in  
24 Count One of the superseding indictment;

25           Third, the person committed the crime of distribution of  
26 methamphetamine in violation of Section 841(a)(1) and (b)(1)(A) of  
27 Title 21 of the United States Code and/or possession with the  
28 intent to distribute methamphetamine in violation Section 841(a)(1)

1 and (b)(1)(A) of Title 21 of the United States Code as charged in  
2 the superseding indictment in furtherance of the conspiracy;

3 Fourth, the defendant was a member of the same conspiracy at  
4 the time the offense charged in Count Two and/or Count Three was  
5 committed; and

6 Fifth, the offense fell within the scope of the unlawful  
7 agreement and could reasonably have been foreseen to be a necessary  
8 or natural consequence of the unlawful agreement.

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23 Ninth Circuit Manual of Model Jury Instructions, Criminal, § 8.25  
24 (2010)

25 Government's Proposed Instruction No. 23

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INSTRUCTION NO. 40

28

**SEPARATE CONSIDERATION OF MULTIPLE COUNTS—SINGLE DEFENDANT**

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 3.11  
(2010)  
Government's Proposed Instruction No. 10

1       **VERDICT - ELECTION OF PRESIDING JUROR - DUTY TO DELIBERATE -**  
2       **UNANIMITY - PUNISHMENT - FORM OF VERDICT - COMMUNICATION WITH THE**  
3       **COURT**

4       Upon retiring to your jury room to begin your deliberation,  
5       you must elect one of your members to act as your presiding juror.  
6       The presiding juror will preside over your deliberations and will  
7       be your spokesperson here in court.

8       Your verdict must represent the collective judgment of the  
9       jury. In order to return a verdict, it is necessary that each juror  
10      agree to it. Your verdict, in other words, must be unanimous as to  
11      each count.

12      It is your duty as jurors to consult with one another and to  
13      deliberate with one another with a view towards reaching an  
14      agreement, if you can do so without violence to individual  
15      judgment. Each of you must decide the case for himself and herself,  
16      but do so only after an impartial consideration of the evidence in  
17      the case with your fellow jurors. In the course of your  
18      deliberations, do not hesitate to reexamine your own views and to  
19      change your opinion if convinced it is erroneous. Do not surrender  
20      your honest conviction, however, solely because of the opinion of  
21      your fellow jurors or for the mere purpose of thereby being able to  
22      return a unanimous verdict.

23      Remember at all times that you are not partisans. You are  
24      judges--judges of the facts of this case. Your sole interest is to  
25      seek the truth from the evidence received during the trial.

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27                                   INSTRUCTION NO. 42

28                                   Page 1 of 3

1       Your verdict must be based solely upon the evidence received  
2 in the case. Nothing you have seen or read outside of court may be  
3 considered. Nothing that I have said or done during the course of  
4 this trial is intended in any way to somehow suggest to you what I  
5 think your verdict should be. Nothing said in these instructions  
6 and nothing in any form of verdict, which has been prepared for  
7 your convenience, is to suggest or convey to you in any way or  
8 manner any intimation as to what verdict I think you should return.  
9 What the verdict shall be is the exclusive duty and responsibility  
10 of the jury. As I have told you many times, you are the sole judges  
11 of the facts.

12       The punishment provided by law for the offenses charged in the  
13 indictment is a matter exclusively within the province of the Court  
14 and should never be considered by the jury in any way in arriving  
15 at an impartial verdict as to the offenses charged.

16       A form of verdict has been prepared for your convenience.

17       [The form of verdict will be read to the jury.]

18       You will take this form to the jury room and, when you have  
19 reached unanimous agreement as to your verdicts, you will have your  
20 presiding juror write your verdicts, date and sign the forms, and  
21 then return with your verdicts to the courtroom.

22       If it becomes necessary during your deliberations to  
23 communicate with the Court, you may send a note, signed by your  
24 presiding juror or by one or more members of the jury, through the  
25

26                                   INSTRUCTION NO. 42

27                                   Page 2 of 3

28



1 bailiff. No member of the jury should ever attempt to communicate  
2 with the Court by any means other than a signed writing and the  
3 Court will never communicate with any member of the jury concerning  
4 the evidence, your opinions, or the deliberations other than in  
5 writing or orally here in open court.

6       You will note from the oath about to be taken by the bailiffs  
7 that they too, as well as all other persons, are forbidden to  
8 communicate in any way or manner with any member of the jury  
9 concerning the evidence, your opinions, or the deliberations.

10       Bear in mind also that you are never to reveal to any  
11 person--not even to the Court--how the jury stands, numerically or  
12 otherwise, on the question of whether or not the government has  
13 sustained its burden of proof until after you have reached a  
14 unanimous verdict.

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24 Federal Jury Practice and Instructions, 5th Ed., § 20.01

25 Court's Proposed Jury Instruction No. 14

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INSTRUCTION NO. 42

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Page 3 of 3

1 CLOSING INSTRUCTION ..

2 When you retire, you should elect one member of the jury as  
3 your foreperson. That person will preside over the deliberations  
4 and speak for you here in court.

5 You will then discuss the case with your fellow jurors to  
6 reach agreement if you can do so. Your verdict, whether guilty or  
7 not guilty, must be unanimous.

8 Each of you must decide the case for yourself, but you should  
9 do so only after you have considered all the evidence, discussed it  
10 fully with the other jurors, and listened to the views of your  
11 fellow jurors.

12 Do not be afraid to change your opinion if the discussion  
13 persuades you that you should. But do not come to a decision  
14 simply because other jurors think it is right.

15 It is important that you attempt to reach a unanimous verdict  
16 but, of course, only if each of you can do so after having made  
17 your own conscientious decision. Do not change an honest belief  
18 about the weight and effect of the evidence simply to reach a  
19 verdict.

20 Your verdict must be based solely on the evidence and on the  
21 law as I have given it to you in these instructions. However,  
22 nothing that I have said or done is intended to suggest what your  
23 verdict should be -- that is entirely for you to decide.

24  
25  
26 INSTRUCTION NO. 43

27 Page 1 of 2  
28

1 The arguments and statements of the attorneys are not  
2 evidence. If you remember the facts differently from the way the  
3 attorneys have stated them, you should base your decision on what  
4 you remember.

5 After you have reached unanimous agreement on a verdict, your  
6 foreperson will fill in the verdict forms that have been given to  
7 you, sign and date them and advise the marshal outside your door  
8 that you are ready to return to the courtroom.

9 If it becomes necessary during your deliberations to  
10 communicate with me, you may send a note through the marshal or  
11 bailiff, signed by your foreperson or by one or more members of the  
12 jury. No member of the jury should attempt to communicate with me  
13 except by a signed writing, and I will communicate with any member  
14 of the jury on anything concerning the case only in writing, or  
15 orally here in open court. Remember that you are not to tell  
16 anyone -- including me -- how the jury stands, numerically or  
17 otherwise, on the question of the innocence or guilt of the  
18 defendant, until after you have reached a unanimous verdict or have  
19 been discharged.

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24 Stock instruction used in this District.

25 Government's Proposed Instruction No. 28

26

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INSTRUCTION NO. 43

28

Page 2 of 2



**TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES-  
IMMUNITY, BENEFITS, ACCOMPLICE, PLEA**

You have heard testimony from [name of witness]. That testimony was given in exchange for a promise by the government that the witness; received benefits, compensation and favored treatment from the government in connection with this case; admitted being an accomplice to the crime charge. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime. The witness pleaded guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendant, and you may consider it only in determining this witness's believability. For these reasons, in evaluating the testimony of [name of witness], you should consider the extent to which or whether his testimony may have been influenced by any of these factors. In addition, you should examine the testimony of this witness with greater caution than that of other witnesses.

Defendant's Proposed Instruction No. 2  
9<sup>th</sup> Cir. Crim. Jury Instr. 4.9 (2010)

Instruction No. 45

1     **JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION**  
2     **TRANSCRIPT OF RECORDING IN FOREIGN LANGUAGE (ACCURACY IN DISPUTE)**

3         You have listened to tape recording in Spanish. You have been  
4 provided transcripts of these recordings. The transcripts were  
5 provided to you by the government so that you could consider the  
6 content of the recordings. The transcripts are an English  
7 translation of the foreign language tape recordings.

8         Whether a transcript is an accurate translation, in whole or  
9 in part, is for you to decide. In considering whether a transcript  
10 accurately describes the meaning of a conversation, you should  
11 consider the testimony presented to you regarding how, and by whom,  
12 the transcript was made. You may consider the knowledge, training,  
13 and experience of the translator, as well as the nature of the  
14 conversation and the reasonableness of the translation in light of  
15 all the evidence in the case. You should not rely in any way on any  
16 knowledge you may have of the language spoken on the recording;  
17 your consideration of the transcripts should be based on the  
18 evidence introduced in the trial.

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23 *United States v. Jordan*, 223 F.3d 676, 689 (7th Cir. 2000). See  
24 also Seventh Circuit Federal Criminal Jury Instructions, § 3.18.  
25 (modified)

26 Defendant Proposed Instruction No. 4

1     **Testimony of Witnesses Involving Special Circumstances - Immunity,**  
2                     **Benefits, Accomplice, Plea**

3             You have heard testimony from Mario Lopez-Fernandez, a witness  
4     who pleaded guilty to a crime arising out of the same events for  
5     which Mr. Rojas-Guzman is on trial. This guilty plea is not  
6     evidence against defendant Jose Rojas-Guzman, and you may consider  
7     it only in determining this witness's believability.

8             For this reason, in evaluating the testimony of defendant Jose  
9     Lopez-Fernandez, you should consider the extent to which or whether  
10    his testimony may have been influenced by this factor. In addition,  
11    you should examine the testimony of Mr. Lopez-Fernandez with  
12    greater caution than that of other witnesses.

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24    Ninth Circuit Manual of Model Jury Instructions, Criminal § 4.9  
25    (2010) (modified)  
26    Defendant's Proposed Instruction No. 5

27                     Instruction No. 47  
28

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question.

Ninth Circuit Manual of Model Jury Instructions, Criminal, § 7.6  
(modified)

Defendant's Proposed Instruction No. 6

Instruction No. 48



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, ) 3:10-CR-00109-ECR-RAM  
Plaintiff, ) COURT'S PROPOSED  
vs. ) VERDICT FORM 1  
JOSE GUADALUPE ROJAS-GUZMAN, )  
Defendant. )

We, the jury in the above entitled case, upon our oaths, do  
say:

**COUNT ONE - CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE AND TO  
DISTRIBUTE A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**

1. As to Count One, Conspiracy to Possess with the Intent to  
Distribute and to Distribute a Controlled Substance, we, the Jury,  
find the Defendant, Jose Guadalupe Rojas-Guzman, either as a  
principal or through aiding and abetting, (place an X in the  
appropriate box):

☐ NOT GUILTY  
☐ GUILTY

If you find the defendant not guilty, do not consider paragraph  
2 below, but proceed to Count Two. If you find the defendant guilty  
as charged, proceed to paragraph 2 below.

1 2. We, the Jury, having found the defendant guilty of the offense  
2 charged in Count One, further unanimously find that he conspired to  
3 possess with intent to distribute methamphetamine in the amount  
4 shown (place an X in the appropriate box):

5  
6 Pure Methamphetamine -

7 ☐ Weighing 50 grams or more

8 ☐ Weighing at least 5 grams but less than 50 grams

9 ☐ Weighing less than 5 grams

10

11

12 **COUNT TWO - DISTRIBUTION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**

13 1. As to Count Two, Distribution of a Controlled Substance, we, the  
14 Jury, find the Defendant, Jose Guadalupe Rojas-Guzman, either as a  
15 principal or through aiding and abetting, (place an X in the  
16 appropriate box):

17

18 ☐ NOT GUILTY

19 ☐ GUILTY

20

21 If you find the defendant not guilty, do not consider paragraph  
22 2 below, but proceed to Count Three. If you find the defendant  
23 guilty as charged, proceed to paragraph 2 below.

24

25 2. We, the Jury, having found the defendant guilty of the offense  
26 charged in Count Two, further unanimously find that he distributed

27

28

1 methamphetamine in the amount shown (place an X in the appropriate  
2 box):

3

4 Pure Methamphetamine -

5 ☐ Weighing 50 grams or more

6 ☐ Weighing at least 5 grams but less than 50 grams

7 ☐ Weighing less than 5 grams

8

9 **COUNT THREE - POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED  
SUBSTANCE (METHAMPHETAMINE)**

10

11 1. As to Count Three, Possession with Intent to Distribute a  
12 Controlled Substance, we, the Jury, find the Defendant, Jose  
13 Guadalupe Rojas-Guzman, either as a principal or through aiding and  
14 abetting, (place an X in the appropriate box):

15

16 ☐ NOT GUILTY

17

18 ☐ GUILTY

19

20 If you find the defendant not guilty, do not consider paragraph  
21 2 below, and your presiding juror should sign and date the form. If  
22 you find the defendant guilty as charged, proceed to paragraph 2  
23 below.

24

25 2. We, the Jury, having found the defendant guilty of the offense  
26 charged in Count Three, further unanimously find that he possessed  
27 with intent to distribute methamphetamine in the amount shown (place  
28 an X in the appropriate box):

29

1 Pure Methamphetamine -

2 [ ] Weighing 50 grams or more

3 [ ] Weighing at least 5 grams but less than 50 grams

4 [ ] Weighing less than 5 grams

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DATED this \_\_\_\_\_ day of December, 2011.

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Presiding Juror

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1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 UNITED STATES OF AMERICA, ) 3:10-CR-00109-ECR-RAM  
5 )  
6 Plaintiff, ) COURT'S PROPOSED  
7 vs. ) VERDICT FORM 2  
8 )  
9 JOSE GUADALUPE ROJAS-GUZMAN, )  
10 Defendant. )  
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12 We, the jury in the above entitled case, upon our oaths, do  
13 say:

14  
15 **COUNT ONE - CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE AND TO**  
16 **DISTRIBUTE A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**

17 1. As to Count One, Conspiracy to Possess with the Intent to  
18 Distribute and to Distribute a Controlled Substance, we, the Jury,  
19 find the Defendant, Jose Guadalupe Rojas-Guzman (place an X in the  
20 appropriate box):

21 ☐ NOT GUILTY

22 ☐ GUILTY  
23

24 If you find the defendant not guilty, do not consider paragraph  
25 2 below, but proceed to Count Two. If you find the defendant guilty  
26 as charged, proceed to paragraph 2 below.  
27  
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1 2. We, the Jury, having found the defendant guilty of the offense  
2 charged in Count One, further unanimously find that he conspired to  
3 possess with intent to distribute methamphetamine in the amount  
4 shown (place an X in the appropriate box):

5  
6 Pure Methamphetamine -

7 ☐ Weighing 50 grams or more

8 ☐ Weighing at least 5 grams but less than 50 grams

9 ☐ Weighing less than 5 grams  
10  
11

12 **COUNT TWO - DISTRIBUTION OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)**

13 1. As to Count Two, Distribution of a Controlled Substance, we, the  
14 Jury, find the Defendant, Jose Guadalupe Rojas-Guzman (place an X in  
15 the appropriate box):

16  
17 ☐ NOT GUILTY

18 ☐ GUILTY  
19

20 If you find the defendant not guilty, do not consider paragraph  
21 2 below, but proceed to Count Three. If you find the defendant  
22 guilty as charged, proceed to paragraph 2 below.  
23

24 2. We, the Jury, having found the defendant guilty of the offense  
25 charged in Count Two, further unanimously find that he distributed  
26  
27

1 methamphetamine in the amount shown (place an X in the appropriate  
2 box):

3

4 Pure Methamphetamine -

5 ☐ Weighing 50 grams or more

6 ☐ Weighing at least 5 grams but less than 50 grams

7 ☐ Weighing less than 5 grams

8

9 **COUNT THREE - POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED**  
10 **SUBSTANCE (METHAMPHETAMINE)**

11 1. As to Count Three, Possession with Intent to Distribute a  
12 Controlled Substance, we, the Jury, find the Defendant, Jose  
13 Guadalupe Rojas-Guzman (place an X in the appropriate box):

14

15 ☐ NOT GUILTY

16 ☐ GUILTY

17

18 If you find the defendant not guilty, do not consider paragraph  
19 2 below, and your presiding juror should sign and date the form. If  
20 you find the defendant guilty as charged, proceed to paragraph 2  
21 below.

22

23 2. We, the Jury, having found the defendant guilty of the offense  
24 charged in Count Three, further unanimously find that he possessed  
25 with intent to distribute methamphetamine in the amount shown (place  
26 an X in the appropriate box):

27

28

- 1 Pure Methamphetamine -
- 2 [ ] Weighing 50 grams or more
- 3 [ ] Weighing at least 5 grams but less than 50 grams
- 4 [ ] Weighing less than 5 grams

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DATED this \_\_\_\_\_ day of December, 2011.

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Presiding Juror

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Count One

(Not Guilty / Guilty)

We, the Jury, having found the defendant(s) guilty of the offense charged in Count One of the superseding indictment, further unanimously find that he conspired to possess with intent to distribute methamphetamine in the amount shown (*place an X in the appropriate box*):

Pure Methamphetamine—

- (i) Weighing 50 grams or more [ ]
- (ii) Weighing at least 5 grams but less than 50 grams [ ]
- (iii) Weighing less than 5 grams [ ]

Count Two

Our verdict as to Count Two - Distribution of a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A), and Aiding and Abetting in violation of Title 18, United States Code, Section 2, is as follows:

Defendant Jose Guadalupe Rojas-Guzman

\_\_\_\_\_  
(Not Guilty / Guilty)

If you find the defendant not guilty, do not consider the following paragraph, and proceed to the next count. If you find the defendant guilty as charged, proceed to the next paragraph below.

We, the Jury, having found the defendant guilty of the offense charged in Count Two of the superseding indictment, further unanimously find that he distributed methamphetamine in the amount shown (*place an X in the appropriate box*):

Pure Methamphetamine—

- (i) Weighing 50 grams or more [ ]
- (ii) Weighing at least 5 grams but less than 50 grams [ ]
- (iii) Weighing less than 5 grams [ ]

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///

Count Three

Our verdict as to Count Three - Possession with Intent to Distribute a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A), and Aiding and Abetting in violation of Title 18, United States Code, Section 2, is as follows:

Defendant Jose Guadalupe Rojas-Guzman

\_\_\_\_\_  
(Not Guilty / Guilty)

If you find the defendant not guilty, do not consider the following paragraph, and proceed to the next count. If you find the defendant guilty as charged, proceed to the next paragraph below.

We, the Jury, having found the defendant guilty of the offense charged in Count Three of the superseding indictment, further unanimously find that he possessed with the intent to distribute methamphetamine in the amount shown (*place an X in the appropriate box*):

Pure Methamphetamine—

- |       |  |     |
|-------|--|-----|
| (i)   | Weighing 50 grams or more                        | [ ] |
| (ii)  | Weighing at least 5 grams but less than 50 grams | [ ] |
| (iii) | Weighing less than 5 grams                       | [ ] |

DATED: \_\_\_\_\_

\_\_\_\_\_  
Foreman of the Jury